IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2997 of 2002

The Municipal Corporation of
Greater Mumbai. ... Petitioners.

V/s.

1. B.P.Steel Industries Pvt.Ltd.

2. The Electrical Inspector,
Mumbai.

3. The Minister of State (Energy)
Maharashtra. ... Respondents.

H.Toor with J.S.Saluja i/b. Crawford Bayley
& Co. for the petitioner.

Jaideep Mitra with Munir Merchant
with respondent No.1.

R.J.Mane, A.G.P. for respondent No.3.

CORAM : V.C.DAGA, J.

DATED : 30th March 2007.

JUDGMENT :

. Heard learned counsel for the rival parties. Perused petition.

2. This petition filed under Article 226 of the Constitution of India seeks to challenge the order of the Electrical Inspector (respondent No.2) confirmed

by the Hon’ble Minister of State, Government of Maharashtra (respondent No.3), holding that the dispute raised was well within the scope of section 24(2) read with 26(2) of the Indian Electricity Act, 1910 ("Act" for short) as such the Electrical Inspector had jurisdiction to deal with and decide the dispute between the parties.

The Facts :

3. The petitioner- Bombay Electricity Supply and Transport Undertaking is an undertaking of the Municipal Corporation of Greater Mumbai and is a licensee under the Act.

4. The petitioner was supplying electricity to respondent No.1- M/s.B.P.Steel Industries Pvt.Ltd. who has a factory located in the compound of M/s.Mysore Chemicals at Plot No.39/44, Sion (E), Mumbai. The petitioner’s factory has four meters installed to consume electricity supplied by the petitioner. However, the dispute involved in the present petition relates to meter bearing No.S-840005 ("subject meter" for short). Hence details of other meters are not necessary.

5. The respondent No.1 faced with complete stoppage of production in the month of November, 1992 and drop in electricity consumption informed the

petitioner by their letter 26th June, 1993 that their electricity consumption has decreased. The letter was received by the petitioner on 28th June, 1993.

6. It appears that after receipt of the aforesaid letter, the petitioner sent its officers for physical inspection of the meters on 13th March, 1995 i.e. After almost 21 months. The meter test report with respect to the subject meter sets out, inter alia; that (i) out of three phases of meter, voltage in two phases i.e. Yellow (Y) and Blue (B) phases was absent/zero; (ii) Y-phase and B-Phase potential wires were found cut at Meter Terminal Block. The petitioner further claims that the test report was countersigned by the representative of respondent No.1 in acknowledgment of its correctness.

7. The petitioner informed respondent No.1 on 27th April, 1995 that the test carried out on 13th March, 1995 found the subject meter to be defective and that the petitioner would be installing check meter and respondent No.1 would be billed on the basis of consumption as may be recorded in the check meter and the past electricity bills of respondent No.1 would, accordingly, be amended.

8. On 4th April, 1996, check meter No.T-950346 was installed. Thereafter, electric consumptions recorded by the check meter and subject meter in the past were compared to find out difference between the two ("the amendment factor" for short). However, precise amendment factor could not be found since amendment factor varied at different times and was inconsistent. As such, the petitioner claims to have computed average monthly consumption of respondent No.1 at 3236 units per month by taking into consideration consumption recorded by subject meter between 17th January, 1992 to 16th November, 1992 during which period the subject meter, according to the petitioner, was functioning properly.

9. The petitioner by their letter dated 19th March, 1997; informed that the test carried out on 13th March, 1995; found that the subject meter was recording incorrect consumption as revealed by the check meter installed on 4th April, 1996. The letter further informed that the petitioner had amended respondent No.1’s account from 4th April, 1993 to 4th April, 1996; on the basis of average monthly consumption and; that the claim amount worked out to

Rs.4,13,361.04, which was due and payable by respondent No.1 to the petitioner. The supplementary electricity bill for the said amount of Rs.4,13,361.04 was also annexed to the said letter. The respondent No.1, on 1st April, 1997, wrote back to the petitioner that they were shocked to receive supplementary electricity consumption bill for a huge amount of Rs.4,13,361.04 and further went on to inform the petitioner that from 17th December, 1992 onwards; there was no production in their factory due to heavy losses incurred in the previous year and, therefore, they consumed negligible electricity during the period for which the petitioner has raised supplementary electricity bill. The petitioner claimed that the representative of respondent No.1 approached them to discuss the supplementary electricity bill, consequently, at their behest the matter was placed before the Claims Review Committee of the petitioner. The review committee after hearing the parties before it, reviewed the supplementary electricity bill of Rs.4,13,361.04 and, ultimately, reduced it to Rs.1,43,628.24. The review committee has taken decision on the basis of average monthly consumption of 2284 units recorded by the check meter.

10. The respondent No.1 addressed letter to respondent No.2- the Electrical Inspector on 29th December, 1998 referring to the original supplementary electricity bill complaining that the bill was unjustified as the factory of respondent No.1 was not in production from December 1992 and also that under section 26(6) of the Act, the duration of an amended bill could not exceed six months. The Electrical Inspector took cognisance of the dispute referred and vide its order dated 24th July, 1999 (Exh.H) quashed the original supplementary electricity bill of Rs.4,13,361.04 and directed petitioner to compute supplementary electricity bill for six months only as specified in the order.

11. Being aggrieved by the aforesaid order of the Electrical Inspector dated 24th July, 1999, the petitioner preferred appeal before respondent No.3 mainly challenging jurisdiction of respondent No.2 contending that respondent No.2 was lacking jurisdiction under the Act to determine the matter between the petitioner and respondent No.1 and contending that the Electrical Inspector erred in exercising jurisdiction under section 26(6) read with section 24(2) of the Act.

12. The various other factual and legal contentions were also raised by the petitioner before respondent No.3. However, none of those contentions found favour with respondent No.3. With the result, appeal filed by the petitioner before respondent No.3 came to be dismissed vide order dated 8th August, 2001 (Exh.I) upholding the order of respondent No.2. This order is a subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

Submissions :

13. Mr.Toor, learned counsel for the petitioner submits that during the course of inspection on 13th March, 1995, out of three phases of the subject meter; two were found cut at meter terminal block. The test report was prepared by the inspecting party, which was duly signed by the representative of respondent No.1 in acknowledgment of its correctness as such there was no dispute between the petitioner and respondent No.1 about incorrectness of the subject meter.

14. Mr.Toor further submits that the supplementary electricity bill raised by the petitioner was only for

a period of three years and that respondent No.1 was given full benefit for the period from 16th November, 1992 to 4th April, 1993.

15. Mr.Toor submits that reference to the Electrical Inspector was belated. The petitioner was entitled to a requisite notice pursuant to the proviso to section 26(6) of the Act. He, at the cost of repetition, submits that there was no dispute between the petitioner and respondent No.1 against incorrectness of the subject meter as such the Electrical Inspector, under section 26(6) of the Act, did not have jurisdiction to entertain and try the dispute between the parties. In support of his submission, he placed reliance on the judgment of the Apex Court in the case of **Tata Hydro-Electric Power Supply Co.Ltd. v. Union of India**, AIR 2003 Sc 1581;and of this Court in **Municipal Corporation v. Sharda Dyeing**, 2005 (3) Bom.C.R. 71; **Indian Silk Mfg.Co. v. State of Maharashtra**, 2005 (2) Mh.L.J. 930 and **Brihanmumbai Mpl.Corpn. v. Sapyah Trust & Sarkar Trust**, AIR 2002 Bombay 315.

16. Mr.Toor further submits that respondent Nos.2 and 3 erred in exercising jurisdiction in the present

case as dispute related to disconnected wirings between electricity meter and current transformer as such the dispute was beyond the sweep of section 26(6) of the Act. In support of his submission, he again placed reliance on the judgment of the Apex Court in the case of **M.P.E.B. v. Basantibai**, AIR 1988 SC 71 and of Patna High court in the case of **Bihar State Electricity Board v. Shree Plywoods (Pvt.) Ltd.**, AIR 2002 Patna 84. He further submits that respondent Nos.2 and 3 erred in not appreciating that the complaint made before respondent No.2 by respondent No.1 was against the original supplementary electricity bill for Rs.4,13,361.04 which was not in existence since the said supplementary electricity bill was revised by the Claims Review Committee to Rs.1,43,628.24 and that there was no complaint against the revised bill.

17. Mr.Toor further submits that respondent Nos.2 and 3 erred in holding that if two out of three phases of the meter were not working then meter must be deemed to have been recording 1/3rd less electricity consumption. This aspect has not been appreciated either by respondent No.2 or respondent No.3 and, therefore, according to him, the impugned order

suffers from non-application of mind and liable to be quashed and set aside.

18. Per contra, Mr.Mitra, learned counsel appearing for respondent No.1 submits that there was virtually complete stoppage of production in the factory of respondent No.1 after November, 1992 as such drop in electricity consumption was correctly reflected in the subject meter. The petitioner was informed by them vide their letter dated 25th June, 1993 as such it was obligatory on their part to immediately visit the factory premises and check the meter. He further submitted that delayed inspection, that too, after expiry of 21 months and without any advance notice to respondent No.1 is sufficient to demonstrate malafide and design hatched by the officers of the petitioner to cover their own lapse. He further submits that after lapse of two years after having made aware about the fall in the electricity consumption by respondent No.1, the petitioner sent its officers to inspect the subject meter without giving any advance notice. Even otherwise, the inspection report nowhere mentions, at the site itself, that the subject meter was defective. He further submits that no technical officer from the

side of respondent No.1 was present at the time of inspection. A non-technical employee of respondent No.1, who was present to watch as to what the officers of petitioner were doing, did not know the technical intricacies mentioned in the report. In his submission, he was not expected to know and that he had signed thereon as witness. The acknowledgement alleged to have been given by the representative of respondent No.1, therefore, cannot be used against it to say that there was no dispute between the petitioner and respondent No.1 about incorrectness of the subject meter.

19. Mr.Mitra further submits that after receipt of huge demand from the petitioner, respondent No.1 realised necessity of invoking the jurisdiction of respondent No.2 finding no response from the petitioner to their letter dated 1st April, 1997, wherein it was specifically informed that from 17th December, 1992 the production activities in the factory of respondent No.1 came to stand still due to heavy losses incurred in the previous year. The advance intimation in this behalf was given to the petitioner vide letter dated 26th June, 1993. Soon thereafter bank accounts of respondent No.1 were

seized by the banks and they had filed recovery suits. With the result, respondent No.1 could not restart their factory and, therefore, the consumption of electricity was negligible during the period for which the supplementary electricity bill was raised. In the circumstances, he submits that no malafide can be alleged by the petitioner against respondent No.1.

20. The learned counsel for respondent No.1 further brought to my notice a letter dated 29th December, 1998 by which reference was made to the Chief Electrical Inspector; wherein at no point of time at any place in the letter, respondent No.1 has admitted that the subject meter was defective or about its incorrectness. The said letter brings out a bare fact giving reference in the earlier letter saying that the factory was closed since December, 1992 and that the intimation was given to the petitioner vide letter dated 26th June, 1993; that all corroborative documents were submitted in support of their closure of industrial unit; that if the meter was not correctly recording consumption it was the responsibility of the petitioner to replace the same immediately; and that the bill sent for 36 months was

quite unjustified. The Electrical Inspector was, thus, requested to look into the matter and issue interim order directing the petitioner not to disconnect the electricity supply till the decision in the matter. On this canvass, learned counsel for respondent No.1 submits that at no point of time respondent No.1 had admitted that the meter was incorrect or defective. He, thus, submits that the submission made by learned counsel for the petitioner that there was no dispute between the parties with respect to incorrectness or defective meter is unsustainable. He further submits that at no point of time the revised supplementary electricity bill based on the decision of the Claims Review Committee was forwarded to respondent No.1 by the petitioner as such respondent No.1 had no knowledge of the revised bill at the time when reference was made to the respondent No.2, consequently, the original supplementary electricity bill for Rs.4,13,361.04 came to be referred to the Electrical Inspector for decision. He, thus, submits that the submission made on behalf of the petitioner alleging malafide against respondent No.1 is without any substance.

21. The learned counsel for respondent No.1 placed

reliance on the judgment of the apex Court in the case of **M.P.E.B. v. Basantibai** (supra) in support of his submission and urged that the jurisdiction of the Electrical Inspector was rightly invoked. He, thus, submits that the impugned orders need no interfere e at the hands of this Court under its writ jurisdiction. He, thus, prayed for dismissal of this petition.

Consideration :

22. The main issue which requires consideration centers around sub-section (6) of section 26 of the Act - whether the said provision is attracted to the facts and circumstances of the present case and, if so, to what extent? The relevant part of section 26 of the Act, relevant for the purpose, is reproduced herein:

> "26. *Meters.*- (1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter;

. Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(2) - (3) ... ...

(4) The licensee or any person duly authorised by the licensee shall, at ;any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electrical Inspector, and the decision of such Inspector shall be final;

. Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) ....

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector, and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of

> such amount or quantity:
>
> . Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days notice of his intention so to do.
>
> (7) ....
>
> Explanation.- A meter shall be deemed to be 'correct' if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be 'correct' if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

The above provision has been subject matter of consideration by the Apex Court in three cases which have been brought to my notice. They are **M.P.E.B. v. Basantibai** (supra); **Belwal Spg. Mills Ltd. v. U.P.SEB**, (1997) 6 SCC 740; and **J.M.D.Alloys Ltd. v. Bihar SEB**, (2003) 5 SCC 226. The correctness of the said decisions is reiterated by the latest three Judge bench of the Apex Court in the case of **Bombay Electricity Supply & Transport Undertaking v. Laffans (India) (P) Ltd.**, (2005) 4 SCC 327. As held by the Apex Court in the said case of **Laffans (India)(P) Ltd.,** the applicability of section 26(6) is attracted only when the meter is not correct. Section 26(6)

will have no applicability (i) if the consumer is found to have committed a fraud with the licensee and thereby illegally extracted the supply of energy preventing or avoiding its recording, or (ii) has resorted to a trick or device whereby the electricity is consumed by the consumer without it being recorded by the meter. In effect the latter class of cases would also be one of fraud. tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in non-registering of the amount of energy supplied to the consumer or the electrical quantity contained in the supply- are the cases which were held to be not covered by section 26(6) in the case of **M.E.B.P. v. Basantibai**, (supra) while the provision was held applicable to any case of meter being faulty due to some defect and not registering the actual consumption of electrical energy. Similar is the view taken in the case of **J.M.D.Alloys Ltd.** (supra).

23. Having seen the settled legal position, now turning to the facts of the case in hand, it is necessary to find out as to whether or not there was no dispute between the parties in respect of the defect or correctness or incorrectness of the subject

meter.

24. In the present case, demand raised by the petitioner against respondent No.1 can be divided into two parts, i.e.; (i) for the period from 16th November, 1992 to 4th April, 1993 and (ii) from 4th April, 1993 to 4th April, 1996 for which the meter was not correct as per the petitioner. For the period 16th November, 1992 to 4th April, 1993, the bills raised by the petitioner have been paid by the consumer- respondent No.1, though it is alleged by the petitioner that the meter remained not correct. For the subsequent period i.e. 4th April, 1993 to 4th April, 1996, the bills raised by the petitioner from time to time were also paid by respondent No.1. It is not in dispute that respondent No.1 had informed the Billing Department of the petitioner that the production activities in its factory have come to stand still due to labour problems and that in spite of not utilising the power the bills were being received as before during the time when the factory was in full production. It was, therefore, requested to investigate into the matter.

25. The petitioner in spite of receipt of the

letter, did nothing for almost 21 month. The petitioner did not take any steps either to check the meter or to make any inspection as requested by respondent No.1. The inspection was taken on 13th March, 1995 i.e. after 22 months by the Energy and Audit Department of the petitioner without any prior notice to respondent No.1 . The inspecting party inspected and tested the subject meter and one person working as ordinary clerk with respondent No.1, at the relevant time, was asked to put his signature on the Inspection Note, who did not know technical intricacies nor he was, at any point of time, put on notice that the inspection is being done in his presence and that he has to carefully watch the same. In that view of the matter, the Inspection Note and the signature of the representative of respondent No.1 cannot be a foundation to conclude that there was no dispute between the petitioner and respondent No.1 about incorrectness of the subject meter.

26. It is no doubt true that the check meter was installed on 4th April, 1996, that too, after a period of 12 months from the date of inspection. The delay in this behalf has not been explained by the petitioner. Consumption of the check meter and

comparison thereof with the subject meter to find out amendment factor could not be a ground to say that the subject meter was incorrect. If there was no production in the factory during the period 4th April, 1993 to 4th April, 1996, then the installation of check meter on 4th April, 1996 and consumption recorded by it subsequent to April, 1996 can hardly be a ground to reach to the conclusion that the subject meter was defective. There is no material on record to suggest that at any point of time the respondent No.1 had accepted contention of the petitioner that the subject meter is defective or was showing incorrect reading.

27. At no point of time, the report of final outcome of the Claims Review Committee and revised supplementary electricity bill showing reduced quantum of charges from Rs.4,13,361.04 to Rs.1,43,628.24 were communicated by the petitioner to respondent No.1 so as to fasten knowledge of the said supplementary electricity bill to respondent No.1.

28. The letter dated 29th December, 1998, by which reference was made to the Chief Electrical Inspector, nowhere suggests any admission on the part of

respondent No.1 that the subject meter was defective or showing incorrect reading. On the contrary, the said letter reiterates stand of respondent No.1 that the factory was closed since December, 1992; that the intimation was given to the petitioner about closure of its factory by the letter dated 25th June, 1993. The corroborative documents in support of the said contention were tendered during the visit of the officers of the petitioner; that it was sought to be suggested in the said letter that if the meter was not recording correct consumption, it was the responsibility of the petitioner to replace the same immediately; that revised bill sent to respondent No.1 for the period of 36 months was quite unjustified; and, therefore, the Electrical Inspector was requested to decide the dispute and give justice in exercise of its powers under section 26(6) of the Act with further request to issue order against the petitioner not to disconnect electricity supply of respondent No.1 till further decision in the matter.

29. Having taken survey of the factual and legal factors available on record, one has to conclude that at no point of time respondent No.1 had admitted that the subject meter was defective. The petitioner was

only suggesting from time to time about incorrectness of the subject meter or incorrect recording of the meter.

30. Needless to mention that at the time of inspection of the subject meter on 13th March, 1995, none of the seals of the meter were found to be broken. At least no such reference is to be found in the Inspection Note. If the seals were intact, in that event, possibility of non-functioning of two phases out of three at the instance of respondent No.1 cannot be accepted. It is not the case of the petitioner that right from the first date of installation of the subject meter, the meter was showing incorrect consumption. It is not a case of the petitioner that seals were broken. If that is so, it is very hard to believe that the inspecting party had found that out of three phases two were absent or potential wires thereof were cut at meter terminal block. It is the duty of the petitioner to carry out periodical checking of the meters and maintain correctness thereof. No steps in this behalf were ever taken by the petitioner. The possibility of playing some mischief by the inspecting party cannot be ruled out, especially, in the peculiar fact that

respondent No.1 had communicated in the month of June, 1993 itself that they are getting bills on higher side though their factory was not in production. Almost for 22 months, the officers of the petitioner did not take any action and after inspect the check meter was installed, practically, after 12 months. The possibility of an attempt to cover their own lapse by showing in the report that potential wires of two phases out of three were cut at meter terminal block, thus, cannot be ruled out.

31. Having held that there was a dispute with respect to correctness or defect of the meter and, consequently, having held that the Electrical Inspector had jurisdiction under section 26(6) of the Act and that respondent No.1 had no knowledge about the revised supplementary electricity bill, one can hardly find fault with the view taken by respondent No.3. By no stretch of imagination, the said view can be said to be perverse warranting interference at the hands of this Court. The view taken by both authorities below is a reasonable and possible view. Consequently, petition is devoid of any substance. The same is liable to be dismissed.

32. The deposit made by respondent No.1 is to be appropriated towards the liability as may be found based on the decision of Electrical Inspector. The balance or surplus, if any, to which respondent No.1 would be entitled, may be refunded to it or adjusted towards its further electricity consumption bills.

33. In the above view of the matter, petition is dismissed. Rule stands discharged with no order as to costs.

(V.C.DAGA, J.)